

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

LEWIS JOHN,

Plaintiff,

v.

DEPUTY MARK C. BERRY, *et al*,

Defendants.

Case No. C05-5694RJB-KLS

REPORT AND  
RECOMMENDATION

Noted for July 28, 2006

This matter has been referred to Magistrate Judge Karen L. Strombom pursuant to 28 U.S.C. § 636(b)(1), Local Magistrates Rules MJR 3 and 4, and Rule 72 of the Federal Rules of Civil Procedure. The case is before the Court on plaintiff's motion seeking an injunction. (Dkt. #21). Having reviewed plaintiff's motion and the remaining record, the undersigned submits the following Report and Recommendation for the Honorable Robert J. Bryan's review.

DISCUSSION

The basic function of preliminary injunctive relief is to preserve the *status quo ante litem* pending a determination of the action on the merits. Los Angeles Memorial Coliseum Com'n v. National Football League, 634 F.2d 1197, 1200 (9<sup>th</sup> Cir. 1980). A party seeking preliminary injunctive relief must fulfill one

1 of two standards, either the “traditional” or the “alternative.” Cassim v. Bowen, 824 F.2d 791, 795 (9<sup>th</sup>  
 2 Cir. 1987). Under the traditional standard:

3 [A] court may issue preliminary relief if it finds that (1) the moving party will suffer  
 4 irreparable injury if the relief is denied; (2) the moving party will probably prevail on  
 5 the merits; (3) the balance of potential harm favors the moving party; and (4) the  
 6 public interest favors granting relief.

7 Id. Under the alternative standard:

8 [T]he moving party may meet its burden by demonstrating either (1) a combination of  
 9 probable success and the possibility of irreparable injury or (2) that serious questions  
 10 are raised and the balance of hardships tips sharply in its favor.

11 Id.; Associated General Contractors of California, Inc. v. Coalition for Economic Equity, 950 F.2d 1401,  
 12 1410 (9<sup>th</sup> Cir. 1991). To obtain preliminary injunctive relief, the moving party must demonstrate exposure  
 13 to a “significant risk of irreparable harm” absent the requested judicial intervention. Associated General  
 14 Contractors of California, Inc., 950 F.2d at 1410; Caribbean Marine Services Co. v. Baldrige, 844 F.2d  
 15 668, 674 (9<sup>th</sup> Cir. 1988). The moving party “must do more than merely allege imminent harm,” he “must  
 16 demonstrate immediate threatened injury as a prerequisite to preliminary injunctive relief.” Associated  
 17 General Contractors of California, Inc., 950 F.2d at 1410.

18 Plaintiff alleges in his motion that the policy of the institution in which he currently is incarcerated  
 19 prohibits making copies of civil matters, and that the mail room at that institution prohibits “multiple copies  
 20 of the same item to come into the inmates [sic] mail.” Plaintiff’s Motion Seeking an Injunction, p. 1.  
 21 Plaintiff requests the Court (1) order the institution’s superintendent to allow him to have as many copies  
 22 made as he needs, or (2) order the Clerk to make copies for him as needed. Plaintiff, however, has made  
 23 no showing that he meets either the traditional or alternative standard noted above. Indeed, he has  
 24 provided no evidence whatsoever regarding the alleged actions of his institution.

25 In addition, “[i]t is elementary that one is not bound by a judgment in personam resulting from  
 26 litigation in which he is not designated as a party or to which he has not been made a party by service of  
 27 process.” Radio Corp. v. Hazeltine Research, Inc., 395 U.S. 100, 110 (1969). In other words, “a court has  
 28 no power to adjudicate a personal claim or obligation unless it has jurisdiction over the person of the  
 defendant.” Id. Here, while the Court can order the Clerk to make copies for him (though it declines to do  
 so), the superintendent of the institution where he is currently incarcerated is not a party to this matter. As  
 such, the Court has no jurisdiction over the superintendent’s person, and therefore no power to issue an

injunction with respect to that official.

CONCLUSION

For all of the above reasons, the court should deny plaintiff's motion seeking an injunction. (Dkt. #21).

Pursuant to 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure ("Fed. R. Civ. P.") 72(b), the parties shall have ten (10) days from service of this Report and Recommendation to file written objections thereto. See also Fed. R. Civ. P. 6. Failure to file objections will result in a waiver of those objections for purposes of appeal. Thomas v. Arn, 474 U.S. 140 (1985). Accommodating the time limit imposed by Fed. R. Civ. P. 72(b), the clerk is directed to set this matter for consideration on **July 28, 2006**, as noted in the caption.

The Clerk is directed to send a copy of this Order to plaintiff and counsel for defendants.

DATED this 5th day of July, 2006.



Karen L. Strombom  
United States Magistrate Judge